

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7592

Petition of Monument Farms Three Gen, LLC)
("Monument Farms") for a certificate of public)
good, pursuant to 30 V.S.A. Section 248(j),)
authorizing the installation and operation of a)
155-kW agricultural-methane electrical generating)
facility at a dairy farm and milk-bottling plant)
owned by Monument Farms Dairy, Inc., located on)
Route 23 in Weybridge, Vermont)

Order entered: 8/31/2011

ORDER RE: AMENDMENT TO CERTIFICATE OF PUBLIC GOOD

I. BACKGROUND

On June 17, 2011, Monument Farms Three Gen, LLC ("Monument Farms") filed a Petition for Amendment (the "Amendment") with the Vermont Public Service Board ("Board") concerning a Certificate of Public Good ("CPG") previously issued to Monument Farms on May 6, 2010, and subsequently amended by the Board on March 31, 2011, involving the construction of a 155 kW agricultural-methane electrical generation facility in Weybridge, Vermont (the "Project"). In the Amendment request, Monument Farms seeks Board approval to convert the Facility from a Sustainably Priced Energy Enterprise Development ("SPEED") resource to a group net metering system. The Petition for Amendment was accompanied by an exhibit providing a description of the proposed group net metering system.

In this Order, for the reasons outlined below, we approve the amendment request from Monument Farms and conclude that the Project, as modified, satisfies the requirements for a group net metering system, and continues to satisfy the criteria of 30 V.S.A. § 248.

On June 17, 2011, the Vermont Electric Power Producers, Inc. ("VEPPI")¹ filed a letter notifying the Board of the existence of a SPEED Standard Offer Contract (the "Contract"),

1. VEPPI serves as the SPEED Facilitator, under contract with the Board. *See* Board Rule 4.306.

effective September 14, 2010, between Monument Farms and VEPPI. VEPPI notes that, under the "Exclusivity Clause" of the contract, Monument Farms waived its right to seek alternative power sales arrangements.

On June 17, 2011, Monument Farms submitted a supplemental filing in response to VEPPI's letter of June 17, arguing that the Amendment should be approved by the Board.

On July 5, 2011, the Vermont Department of Public Service ("DPS") filed a letter recommending Board approval of the request from Monument Farms for an amended CPG. The DPS stated that it does not object to the proposed amendment provided that Monument can supply the Board with justification that conversion of the Project to a group net metering system will serve the public interest pursuant to the terms of the Contract.

Monument Farms filed a response to the DPS's letter on July 13, 2011, asserting that the Amendment is in the public interest.

On July 29, 2011, the DPS filed comments concluding that, based on Monument Farms' response of July 13, the proposed Amendment will serve the public interest.

On August 1, 2011, VEPPI filed comments reaffirming VEPPI's opposition to the proposed Amendment.

On August 4, 2011, Monument Farms filed a letter requesting prompt approval of the Amendment.

No other party filed comments on the amendment request.

II. FINDINGS

1. At the time Monument Farms obtained its CPG in 2010, Monument Farms represented that the Project would be a SPEED resource and entered into a SPEED Standard Offer Contract with VEPPI. Amend. Petition at 1.

2. For economic reasons, Monument Farms proposes to operate the Project as a group net metering system rather than a SPEED resource. The proposed group currently consists of shareholders of Monument Farms, Inc., a family corporation, who are also members of Monument Farms Three Gen, LLC. Due to Monument Farms' integrated multi-tiered business format, and the amount of energy that is consumed in processing and bottling milk, Monument

Farms expects its electrical usage to closely approximate the projected output of the Project. As a result, Monument Farms anticipates that the Project, as a group net metering system, has the potential to mitigate the impact of future rate increases on Monument Farms and thereby contribute to the economic viability and sustainability of its overall agribusiness operation. Amend. Petition at 1; exh. 1; letter of Monument Farms dated 7/6/11 at 1.

3. Monument Farms has specified sixteen meters to be included in the group system by account number and location.² Monument Farms has also provided a method for adding or removing meters included in the group system. Exh. 1.

4. Monument Farms has designated Cliff Carpenter as the person responsible for receiving all communications regarding the group system. *Id.*

5. Providing for dispute resolution within the designated group will not be necessary because the accounts are all part of the same entity, Monument Farms. In the event that accounts are added for individuals or entities other than Monument Farms, any disputes arising would be submitted to binding arbitration. *Id.*

6. The proposed conversion to a group net metering system will not involve any changes to the physical plant, interconnection, or operation of the Project as originally approved by the Board in this Docket. Amend. Petition at 2.

7. Monument Farms seeks approval to operate its Project as a group net metering system by obtaining an amendment to its existing CPG instead of applying for a new CPG using the Net Metering Application Form under Board Rule 5.100. In obtaining its existing CPG, Monument Farms satisfied all of the procedural and substantive requirements of 30 V.S.A. § 248. *Id.*

8. The SPEED Standard Offer Contract contains the following "Exclusivity Clause" under Section 12:

During the Term of this Agreement, Producer shall not enter into any other agreement for the sale or other conveyance of any portion of the Electricity or any Other Product that is the subject of sale under this Agreement. Producer acknowledges that, by entering into this Agreement, Producer is waiving any and

2. The group system consists of the following designated accounts: Hamilton Farm Help, Farm Shop, Bingham Barn, Heifer Barn Hamilton, Processing Plant, Hagar Farm, Bittersweet Falls Farm Help, James Road Farm Help, Hamilton Farm, Gingras Farm Help, Gingras Barn, Weybridge Road Farm Help, James Road Farm Help, and Digester Gen Set Building. Exhibit 1.

all rights to seek an alternative power sales arrangement, including but not limited to an arrangement through Board Rules 4.100, 4.300 and 5.100, at any time throughout the term set forth in this Agreement. Absent an order of the Board to the contrary, this waiver shall extend throughout the full term contemplated under this Agreement, even if this Agreement is terminated early for any reason by default, for cause or otherwise.

Letter of VEPPI dated June 17, 2011, at 1.

9. Construction of the Project has been completed but the facility has not yet begun to produce electricity; therefore, Monument Farms has not received any payments under the standard offer price of the Contract. *Id.*; letter of Monument Farms dated June 17, 2011, at 1.

10. Monument Farms anticipates that its departure from the SPEED program will free-up space for new SPEED projects or the expansion of existing projects. Letter of Monument Farms dated 7/6/11 at 2.

III. DISCUSSION & CONCLUSION

As referenced in the Findings above, Monument Farms proposes to operate the Project as a group net metering system rather than a SPEED resource. The proposed net metering system will be a group system consisting of a total of sixteen utility meters at various facilities and locations owned by Monument Farms. Pursuant to 30 V.S.A. § 219a(a)(2):

"Net metering" means measuring the difference between the electricity supplied to a customer and the electricity fed back by a net metering system during the customer's billing period:

- (A) using a single, nondemand meter or such other meter that would otherwise be applicable to the customer's usage but for the use of net metering; or
- (B) on farm or group systems, using multiple meters as specified in this chapter. The calculation will be made by converting all meters to a nondemand, nontime-of-day meter, and equalizing them to the tariffed kilowatt-hour rate.

Further, pursuant to 30 V.S.A. § 219a(g)(1):

In addition to any other requirements of section 248 of this title and this section and board rules thereunder, before a farm or group net metering system including more than one meter may be formed and served by an electric company, the proposed farm or group net metering system shall file with the board, with copies to the department and the serving electric company, the following information:

- (A) the meters to be included in the group net metering system, identified by account number and location;

- (B) a procedure for adding and removing meters included in the group net metering system;
- (C) a designated person responsible for all communications from the group net metering system to the serving electric company, for receiving and paying bills for any service provided by the serving electric company for the group net metering system, and for receiving any other communications regarding the group net metering system; and
- (D) a binding process for the resolution of any disputes within the group net metering system relating to net metering that does not rely on the serving electric company, the Board, or the Department.

Monument Farms' Exhibit 1, which was filed with the Amendment, addresses subsections (A), (B) (C) and (D), above. Specifically, Monument Farms has designated the meters to be included in the group system by account number and location, has provided a method for adding or removing meters included in the group system, has appointed Cliff Carpenter as the person responsible for receiving all communications regarding the group system, and has attested that all disputes among users of the group system shall be resolved by binding arbitration. Accordingly, we conclude that the requirements for a group net metering system have been satisfied by Monument Farms. We also note that in our original Order granting approval of the Project, Order dated May 6, 2010, we previously determined that the Project complies with the requirements of 30 V.S.A. § 248(j) as those requirements apply to SPEED projects under Board Rule 4.312, which involves a more stringent standard of review than under § 248(b) which applies to net metering projects under Board Rule 5.100.³

VEPPI has filed two objections with the Board opposing the proposed conversion of the Project to a group net metering system and abrogation of the existing Contract. VEPPI is apparently relying on a strict interpretation of the "Exclusivity" provisions under Section 12 of the Contract, an interpretation which we do not adopt here. Essentially, VEPPI argues that Monument Farms' proposal does not constitute a special circumstance under which the Board should grant relief from Section 12, and that the applicability of the Exclusivity provision is not dependent on whether or not the Project has begun to generate and sell power.⁴ In addition, VEPPI asserts that granting the requested relief would have substantial precedential significance

3. Docket No. 7592, Order of 5/6/10 at 3.

4. Letter of VEPPI dated 7/29/11 at 1-2.

in that it would weaken the long-term stability of the pricing mechanism for power under the Standard Offer program.⁵

Upon review of the Contract and VEPPI's correspondence filed in this proceeding, we are not persuaded by VEPPI's arguments. The Exclusivity Clause of the Contract explicitly contemplates that circumstances may arise under which the Board should grant relief, with such a determination to be within the full discretion of the Board based on the merits of the request. Moreover, it is also clear that the purpose of the clause is to protect ratepayers from the premature withdrawal from the program by developers after those developers have received a premium for power that is subsidized by the ratepayers.⁶ In the present case, Monument Farms has not yet begun to generate power under its Contract with VEPPI and thus has not received any monetary benefit from the agreement (if Monument Farms had received payment our analysis would be very different). Consequently, we conclude that the interests of ratepayers are not at risk in this particular instance, and that ratepayers will not be harmed by Monument Farms' withdrawal from the SPEED program.

In addition, the DPS raised the issue as to whether or not the proposed Amendment will serve the public interest. Under Section 28 of the Contract, the Board may order amendments to the contract, without the consent of the parties, when the amendment will serve the public interest, provided that:

- (1) such amendment does not result in any reduction in the project's economic value to Producer;
- (2) such amendment will not adversely affect Producer's ability to meet the project's financial obligations;
- (3) such amendment will not impose additional operational or other economic costs on Producer without full compensation;
- (4) the amendment results in a benefit to ratepayers.

Although Monument Farms is not requesting an amendment to the Contract, we find the public interest standard to be relevant in this proceeding in determining whether or not to grant the

5. *Id.*

6. Docket No. 7533, Order of 9/30/09 at 32-33.

proposed amendment to the CPG. Monument Farms argues that its Amendment serves the public interest in that it promotes the economic viability of its farming operation pursuant to the state of Vermont's policy of promoting and sustaining in-state dairy production, while at the same time freeing up wattage capacity under the SPEED program to accommodate new projects or the expansion of existing projects.⁷ The DPS concurs with Monument Farms' argument. Our examination of the evidence in this case indicates that Monument Farms' proposed Amendment complies with subsections 1 through 4 of Section 28 of the Contract referenced above and thus meets the public interest standard.

Therefore, based on the foregoing, we conclude that the requirements for a group net metering system have been satisfied, that the modified Project will continue to satisfy the criteria of Section 248, and that the Project will promote the general good of the state. Accordingly, an amended Certificate of Public Good shall be issued in this matter to reflect a group net-metered facility. We also conclude that the terms of Section 7 of the Contract, "Administrative Fee and Deposit," apply in this case and that Monument Farms is entitled to a 100% refund of its original deposit with VEPPI.

SO ORDERED.

7. Letter of Monument Farms dated 7/06/11 at 1-2.

Dated at Montpelier, Vermont, this 31st day of August, 2011.

<u>s/ James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/ David C. Coen</u>)	BOARD
)	
)	OF VERMONT
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OFFICE OF THE CLERK

FILED: August 31, 2011

ATTEST: s/ Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.